



March 29, 2001

Mr. Brendan Hall
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2001-1243

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145428.

The Harlingen Police Department (the “department”) received a written request for “all documents relating to and generated by the internal investigation conducted by Det. David Means relating to the arrest and disclosure of confidential information of” a named individual. You contend that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

We note at the outset that the requestor contends that you did not request a decision from this office in a timely manner. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov’t Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

Our review of the request for information shows that it was submitted to the department on January 9, 2001, but after normal business hours. We therefore consider the request as being received on the next business day, January 10, 2001. You requested a decision from this office on January 24, 2001, the tenth business day after January 10, 2001.¹ We therefore deem your request for a decision as timely, and accordingly will consider the applicability of the exceptions you raised.

You contend that all of the requested records are excepted from disclosure under section 552.103 of the Government Code because the records relate to a pending criminal prosecution. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). In this instance, you have not established that the department is a party to the criminal litigation. Furthermore, most of the information at issue does not relate to the criminal charges currently being prosecuted; rather, most of the information at issue pertains only to an administrative internal affairs investigation of possible employee misconduct that is unrelated to the criminal prosecution. We therefore conclude that the department may not withhold any of the information at issue pursuant to section 552.103 of the Government Code.

You also contend that section 552.108 of the Government Code excepts the information at issue from public disclosure. Although one of the purposes of this exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133, 127 (1976), you have not demonstrated how the release of the information pertaining to the internal affairs investigation would interfere with law enforcement for purposes of subsections 552.108(a)(1) and 552.108(b)(1).² Furthermore, because the internal affairs investigation is administrative, as opposed to criminal, in nature, we do not believe that either subsection 552.108(a)(2) or 552.108(b)(2) was intended to protect information pertaining to the investigation, which cannot possibly result in conviction or deferred adjudication absent a related criminal investigation. *See also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable to administrative internal affairs investigation where no criminal investigation resulted). Because the internal affairs investigation does not pertain

¹Although we were provided a sworn affidavit stating the request was received by the department on January 11, 2001, we were also provided a facsimile confirmation indicating receipt at 6:19 p.m. on January 9, 2001. In addition, the request is stamped with a date of January 10, 2001.

²We note that police officers are generally required, as a condition of employment, to fully cooperate in internal affairs investigations.

to a criminal offense, we conclude that most of the records at issue may not be withheld under section 552.108 and therefore must be released, with the following exception.

Among the documents at issue are records and an offense report pertaining to a DWI arrest. Based on your representation that this offense report pertains to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating that the release of the offense report and related criminal investigation records at this time “would interfere with the detection, investigation, or prosecution of crime.” The department therefore may withhold most of these records, which we have marked, pursuant to section 552.108(a)(1) of the Government Code. However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See also* Open Records Decision No. 127 at 3-4 (1976). Accordingly, all basic information regarding the DWI arrest must be released.

In summary, the requested information must be release in its entirety, except for those documents we have marked as subject to section 552.108(a)(1), which may be withheld, except for the basic information contained therein. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Agan", written over a horizontal line.

Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 145428

Encl. Submitted documents

cc: Mr. David Siller Gonzales, III
501 East Tyler
Harlingen, Texas 78550
(w/o enclosures)